

House Bill 57 (AS PASSED HOUSE AND SENATE)

By: Representatives Powell of the 29th and Rice of the 51st

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 2 of Title 40 of the Official Code of Georgia Annotated, relating to
2 registration and licensing of motor vehicles, so as to define certain terms and fees; to change
3 certain provisions relating to motor carrier permitting; to designate the Department of
4 Revenue as the agency responsible for the administration of the federal Unified Carrier
5 Registration Act of 2005; to amend Title 46 of the Official Code of Georgia Annotated,
6 relating to public utilities and public transportation, so as to repeal and reserve certain
7 provisions; to provide that certain provisions are unenforceable; to provide that identification
8 requirements shall comply with the applicable provisions of the federal Unified Carrier
9 Registration Act of 2005; to provide for promulgation of rules; to provide exemptions from
10 application of provisions; to provide for related matters; to provide for effective dates and
11 applicability; to repeal conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 **SECTION 1.**

14 Chapter 2 of Title 40 of the Official Code of Georgia Annotated, relating to registration and
15 licensing of motor vehicles, is amended by revising Code Section 40-2-1, relating to
16 definitions, as follows:

17 "40-2-1.

18 As used in this chapter, the term:

19 (1) 'Cancellation of vehicle registration' means the annulment or termination by formal
20 action of the department of a person's vehicle registration because of an error or defect
21 in the registration or because the person is no longer entitled to such registration. The
22 cancellation of registration is without prejudice and application for a new registration
23 may be made at any time after such cancellation.

24 (2) 'Commissioner' means the state revenue commissioner.

25 (3) 'Department' means the Department of Revenue.

26 (4) 'Motor carrier' means:

(A) Any entity subject to the terms of the Unified Carrier Registration Agreement pursuant to 49 U.S.C. Section 14504a whether engaged in interstate or intrastate commerce, or both; or

(B) Any entity defined by the commissioner, commissioner of public safety, or Public Service Commission who operates or controls commercial motor vehicles as defined in 49 C.F.R. Section 390.5, Title 46, or this chapter whether operated in interstate or intrastate commerce, or both.

(5) 'Operating authority' means the registration required by 49 U.S.C. Section 13902, 49 C.F.R. Part 365, 49 C.F.R. Part 368, and 49 C.F.R. Section 392.9a.

(6) 'Regulatory compliance inspection' means the examination of facilities, property, buildings, vehicles, drivers, employees, cargo, packages, records, books, or supporting documentation kept or required to be kept in the normal course of motor carrier business or enterprise operations.

~~(4)~~(7) 'Resident' means a person who has a permanent home or abode domicile in Georgia and to which, whenever he or she is having been absent, he or she has the intention of returning. For the purposes of this chapter, there is a rebuttable presumption that any person who, except for infrequent, brief absences, has been present in the state for 30 or more days is a resident.

~~(5)~~(8) 'Revocation of vehicle registration' means the termination by formal action of the department of a vehicle registration, which registration shall not be subject to renewal or restoration reinstatement, except that an application for a new registration may be presented and acted upon by the department after the expiration of the applicable period of time prescribed by law.

~~(6)~~(9) 'Suspension of vehicle registration' means the temporary withdrawal by formal action of the department of a vehicle registration, which temporary withdrawal shall be for a period specifically designated by the department."

SECTION 2.

Said title is further amended by inserting a new article to read as follows:

"ARTICLE 6A

40-2-140.

(a) The Department of Revenue shall be the state agency responsible for the administration of the federal Unified Carrier Registration Act of 2005, which includes participating in the development, implementation, and administration of the Unified Carrier Registration Agreement.

61 (b) Every foreign or domestic motor carrier, leasing company leasing to a motor carrier,
62 broker, or freight forwarder that engages in interstate commerce in this state shall register
63 with the commissioner or a base state and pay all fees as required by the federal Unified
64 Carrier Registration Act of 2005.

65 (c)(1) Any motor carrier, leasing company leasing to a motor carrier, broker, or freight
66 forwarder that engages in intrastate commerce and operates a motor vehicle on or over
67 any public highway of this state shall register with the commissioner and pay a fee
68 determined by the commissioner.

69 (2) No motor carrier shall be issued a registration unless there is filed with the
70 commissioner or the Federal Motor Carrier Safety Administration or any successor
71 agency a certificate of insurance for such applicant or holder, on forms prescribed by the
72 commissioner, evidencing a policy of indemnity insurance by an insurance company
73 licensed to do business in this state. Such policy shall provide for the protection of
74 passengers in passenger vehicles and the protection of the public against the negligence
75 of such motor carrier, and its servants or agents, when it is determined to be the
76 proximate cause of any injury. The commissioner shall determine and fix the amounts
77 of such indemnity insurance and shall prescribe the provisions and limitations thereof.
78 The insurer shall file such certificate. Failure to file any form required by the
79 commissioner shall not diminish the rights of any person to pursue an action directly
80 against a motor carrier's insurer. The insurer may file its certificate of insurance
81 electronically with the commissioner.

82 (3) The commissioner shall have the power to permit self-insurance in lieu of a policy
83 of indemnity insurance whenever in his or her opinion the financial ability of the motor
84 carrier so warrants.

85 (4) Any person having a cause of action, whether arising in tort or contract, under this
86 Code section may join in the same cause of action the motor carrier and its insurance
87 carrier.

88 (d) Before any motor carrier engaged in exempt passenger intrastate commerce shall
89 operate any motor vehicle on or over any public highway of this state, the motor carrier
90 shall register with the commissioner and pay a fee determined by the commissioner.

91 (e) In addition to any requirements under the federal Unified Carrier Registration Act of
92 2005, motor carriers required to have operating authority shall fulfill all applicable
93 requirements for obtaining operating authority prior to any operation of a motor vehicle to
94 which such requirements apply.

95 (f) The commissioner shall collect the fees imposed by this Code section and may establish
96 rules and regulations and prescribe such forms as are necessary to administer this Code
97 section and the federal Unified Carrier Registration Act of 2005. Notwithstanding the

provisions of Code Sections 40-2-131 and 48-2-17, the commissioner shall retain and utilize such fees for motor carrier safety programs and enforcement and administration of this article.

(g) The commissioner of public safety, and persons he or she designates pursuant to Chapter 2 of Title 35, shall have the authority to perform regulatory compliance inspections under the provisions of Article 5 of Chapter 2 of Title 35 for purposes of determining compliance with laws and regulations, the enforcement and administration of which is the responsibility of the Department of Public Safety.

(h) Every officer, agent, or employee of any corporation and every person who fails to comply with this article and any order, rule, or regulation of the Public Service Commission, Department of Public Safety, or Department of Revenue, or who procures, aids, or abets therein, shall be guilty of a misdemeanor. Misdemeanor violations of this article may be prosecuted, handled, and disposed of in the manner provided for in Chapter 13 of this title."

SECTION 3.

Title 46 of the Official Code of Georgia Annotated, relating to public utilities and public transportation, is amended by revising Code Section 46-7-12.1, relating to motor carriers' requirements as to obtaining indemnity insurance or self-insurance before issuance of permit, in its entirety as follows:

"46-7-12.1.

(a) As used in this Code section, the term:

(1) 'Motor carrier transportation contract' means a contract, agreement, or understanding covering:

(A) The transportation of property for compensation or hire by the motor carrier;

(B) Entrance on property by the motor carrier for the purpose of loading, unloading, or transporting property for compensation or hire; or

(C) A service incidental to activity described in subparagraph (A) or (B) of this paragraph, including, but not limited to, storage of property.

Motor carrier transportation contract shall not include the Uniform Intermodal Interchange and Facilities Access Agreement administered by the Intermodal Association of North America or other agreements providing for the interchange, use, or possession of intermodal chassis, containers, or other intermodal equipment.

(2) 'Promisee' means the promisee and any agents, employees, servants, or independent contractors who are directly responsible to the promisee except for motor carriers party to a motor carrier transportation contract with a promisee and such motor carrier's agents,

employees, servants, or independent contractors directly responsible to such motor carrier.

(b) Notwithstanding any provision of law to the contrary, a provision, clause, covenant, or agreement contained in, collateral to, or affecting a motor carrier transportation contract that purports to indemnify, defend, or hold harmless, or has the effect of indemnifying, defending, or holding harmless, the promisee from or against any liability for loss or damage resulting from the negligence or intentional acts or omissions of the promisee is against the public policy of this state and is void and unenforceable."

SECTION 4.

Said title is further amended by repealing and reserving subsections (a) through (d) of Code Section 46-7-15, relating to registration and licensing of motor carriers and cities and counties barred from levying taxes on carriers.

SECTION 5.

Said title is further amended by repealing Code Section 46-7-15.1, relating to motor carrier of property permits, in its entirety.

SECTION 6.

Said title is further amended by repealing and reserving Code Section 46-7-16, relating to registration and insurance for motor carriers engaged solely in interstate commerce; emergency, temporary, or trip-lease vehicle registration permits; late registration and identification; reciprocal agreements; and certificate not required.

SECTION 7.

Said title is further amended by revising Code Section 46-7-26, relating to the authority of the commissioner to promulgate rules and regulations for safety, as follows:
"46-7-26.

(a) The commissioner of public safety shall have the authority to promulgate rules and regulations for the safe operation of motor vehicles and drivers and the safe transportation of hazardous materials. Any such rules and regulations promulgated or deemed necessary by the commissioner of public safety shall include the following:

(1) Every motor vehicle and all parts thereof shall be maintained in a safe condition at all times; and the lights, brakes, and equipment shall meet such safety requirements as the commissioner of public safety shall from time to time promulgate;

(2) Every driver employed to operate a motor vehicle for a motor carrier shall be at least 18 years of age, of temperate habits and good moral character, possess a valid driver's

license, not use or possess prohibited drugs or alcohol while on duty, and shall be fully competent to operate the motor vehicle under his or her charge;

(3) Accidents arising from or in connection with the operation of motor common or contract carriers shall be reported to the commissioner of transportation in such detail and in such manner as the commissioner of transportation may require; and

(4) The commissioner of public safety shall require every motor common, contract, exempt, and ~~contract carrier~~ private carrier's vehicles to have attached to each unit or vehicle such distinctive markings ~~or tags~~ as shall be adopted by the commissioner of public safety. Such identification requirements shall comply with the applicable provisions of the federal Unified Carrier Registration Act of 2005.

(b) Regulations governing the safe operation of motor vehicles and drivers and the safe transportation of hazardous materials may be adopted by administrative order, including, but not limited to, referencing compatible federal regulations or standards without compliance with the procedural requirements of Chapter 13 of Title 50, provided that such compatible federal regulations or standards shall be maintained on file by the Department of Public Safety and made available for inspection and copying by the public, by means including, but not limited to, posting on the department's computer Internet site. The commissioner of public safety may comply with the filing requirements of Chapter 13 of Title 50 by filing with the office of the Secretary of State merely the name and designation of such rules, regulations, standards, and orders. The courts shall take judicial notice of rules, regulations, standards, or orders so adopted or published.

(c) The commissioner of public safety may, pursuant to rule or regulation, specify and impose civil monetary penalties for violations of laws, rules, and regulations relating to driver and motor carrier safety and transportation of hazardous materials. Except as may be hereafter authorized by law, the maximum amount of any such monetary penalty shall not exceed the maximum penalty authorized by law or rule or regulation for the same violation immediately prior to July 1, 2005."

SECTION 8.

Said title is further amended by revising Code Section 46-7-37, relating to private carriers excepted from application of article; safety rules authorized; and certificates or permits not required, as follows:

"46-7-37.

(a) Except as otherwise provided in ~~subsection (b)~~ of this Code section, this article shall not apply to private carriers engaged exclusively in the transportation of goods belonging to the individual, firm, partnership, corporation, or association owning, controlling,

operating, or managing the motor vehicle in private transportation over any public highway in this state.

~~(b) The commission shall have the authority to promulgate rules designed to promote safety of private carriers. Every motor vehicle of a private carrier and all parts thereof shall be maintained in a safe condition at all times; and the carrier's equipment shall meet such safety requirements as the commission shall from time to time promulgate. Private carriers shall be subject to the requirements of Code Sections 46-7-26 and 46-7-27, as well as the jurisdiction of the commissioner of public safety, pursuant to Article 5 of Chapter 2 of Title 35.~~

(c) Private carriers are not required to hold certificates or permits issued by the commission."

SECTION 9.

Said title is further amended by revising Code Section 46-7-39, relating to the penalty for failure to comply with Chapter 7 of such title, as follows:

"46-7-39.

(a) Every officer, agent, or employee of any corporation and every person who violates or fails to comply with this chapter relating to the regulation of motor carriers; or any order, rule, or regulation of the Public Service Commission, Department of Public Safety, or Department of Revenue, or who procures, aids, or abets therein, shall be guilty of a misdemeanor.

(b) No person shall drive or operate, or cause the operation of, a motor vehicle in violation of an out-of-service order. As used in this subsection, the term 'out-of-service order' means a temporary prohibition against operating as a carrier or driving or moving a motor vehicle, freight container or any cargo thereon, or any package containing a hazardous material.

(c) Misdemeanor violations of this chapter may be prosecuted, handled, and disposed of in the manner provided for by Chapter 13 of Title 40."

SECTION 10.

(a) Section 3 of this Act shall become effective on July 1, 2009, and shall apply to contracts entered into on or after such date.

(b) Sections 4 and 5 of this Act shall become effective October 1, 2009, for the purpose of adopting rules and regulations to implement the federal Unified Carrier Registration Act of 2005.

(c) The remaining sections of this Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

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SECTION 11.

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All laws and parts of laws in conflict with this Act are repealed.